

No. 8476

15

IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant,

vs.

ALMA I. WAGNER, Executrix of the
Estate of Robert G. Wagner, Deceased;
UNITED STATES FIDELITY &
GUARANTY COMPANY, a Corpora-
tion,
Appellees.

TRANSCRIPT OF RECORD

FILED

FEB 27 1937

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(Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.)

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant :

PEIRSON M. HALL
United States Attorney

E. H. MITCHELL

ALVA C. BAIRD

Assistants United States Attorney

Federal Building
Los Angeles, California

For Appellee Alma I. Wagner :

CLAUDE I. PARKER
Bank of America Building
Los Angeles, California

For Appellee United States Fidelity, etc. :

MILLS, HUNTER & DUNN
Chapman Building
Los Angeles, California

UNITED STATES OF AMERICA, ss.

TO ALMA I. WAGNER and to CLAUDE I. PARKER her attorney:

TO UNITED STATES FIDELITY & GUARANTY COMPANY, a Corp., and MILLS, HUNTER & DUNN, its attorneys:
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 30th day of January, A.D. 1937, pursuant to a petition for appeal and order allowing the same filed December 30, 1936, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled United States of America v. Alma I. Wagner, Executrix of the Est. of Robert G. Wagner, Dec., and United States Fidelity and Guaranty Company, a Corp., No. 7125-M, wherein United States is plaintiff-appellant and you are defendants-appellees to show cause, if any there be, why the Judgment in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Paul J. McCormick, United States District Judge for the Southern District of California, this 30th day of December, A.D. 1936, and of the Independence of the United States, the one hundred and sixty-first.

PAUL J. McCORMICK
U. S. District Judge for the Southern
District of California.

(Endorsed): Service of a copy of the above citation together with a copy of the petition for appeal, order allowing appeal, and assignment of errors is hereby acknowledged this 31 day of December, 1936. Claude I. Parker. By J. Everett Blum, Attorneys for Alma I. Wagner. Mills, Hunter & Dunn, By Edward C. Mills, Attorneys for U. S. Fidelity & Guaranty Co. Filed Dec. 31-1936. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALMA I. WAGNER, Executrix of the Estate of
ROBERT G. WAGNER, Deceased,

and

UNITED STATES FIDELITY & GUARANTY COM-
PANY, a corporation,

Defendants.

At Law No. 7125-M

COMPLAINT

FOR RECOVERY ON BOND FOR INCOME TAX

The United States by its attorney, Peirson M. Hall, United States Attorney for the Southern District of California, complains of the defendants in an action at law alleging for a cause of action as follows:

I.

That the plaintiff was at all times hereinafter mentioned and is now a corporation sovereign and body politic.

II.

That the defendant, Alma I. Wagner, is a citizen of the State of California and resides at 830 South Olive Street, Los Angeles, in the State and Southern judicial district of California, within the jurisdiction of this Court.

III.

That the defendant, the United States Fidelity & Guaranty Company, is a corporation organized and existing under and by virtue of the laws of the State of Maryland and duly authorized to engage in business in the State of California; that said defendant has an office and place of business at which it may be served with process herein at 724 South Spring Street, City of Los Angeles, Los Angeles County, State of California, within the jurisdiction of this Court.

IV.

That this is a suit at law of civil nature founded upon contract and growing out of the laws of the United States providing for internal revenue and is authorized and sanctioned by the Attorney General of the United States at the request of the United States Commissioner of Internal Revenue.

V.

That on to-wit, March 15, 1921, Robert G. Wagner a resident of Los Angeles, State of California, filed in

the office of the Collector of Internal Revenue, an income tax return for the calendar year 1920.

VI.

That waivers were duly executed by the said Robert G. Wagner, which waived the requirements of the several revenue acts and extended the time within which assessment of additional income tax for 1920 might be made, until December 31, 1927, with the exception that if a notice of a deficiency in tax should be sent to said taxpayer by registered mail before December 31, 1927, and an appeal should be filed therefrom with the United States Board of Tax Appeals, then the date for assessment should be further extended by the number of days between the date of mailing of said notice of deficiency and the date of final decision by the said United States Board of Tax Appeals.

VII.

That on, to-wit, May 25, 1927, the said Robert G. Wagner died testate being at the time of his death a resident of the City and County of Los Angeles, California; that on, to-wit, June 15, 1927, the Superior Court of the State of California in and for the County of Los Angeles, granted letters testamentary to Alma I. Wagner, the defendant herein.

VIII.

That on, to-wit, October 19, 1927, notice of a deficiency of tax for 1920 in the amount of \$13,380.44 was sent by registered mail addressed to Mrs. Alma I. Wagner, Executrix, Mr. Robert G. Wagner, Deceased, 830 South Olive Street, Los Angeles, California, said notice

inviting the defendant's attention to her right to file a petition within sixty days with the United States Board of Tax Appeals for a redetermination of the deficiency.

IX.

That the said Alma I. Wagner, duly filed a petition with the United States Board of Tax Appeals, said cause being assigned Docket No. 32981 and being entitled Alma I. Wagner, Executrix, Estate of Robert G. Wagner, Deceased, petitioner, v. Commissioner of Internal Revenue, respondent, for a redetermination of the tax for 1920.

X.

That on, to-wit, June 29, 1931, the said United States Board of Tax Appeals entered its decision that there was a deficiency of \$13,380.44 for 1920.

XI.

That on, to-wit, October 24, 1931, in accordance with the provisions of section 1001 of the Revenue Act of 1926 as amended by section 603 of the Revenue Act of 1928 relating to the filing of petitions for the review of decisions of the United States Board of Tax Appeals by the United States Circuit Court of Appeals, the defendants herein, Alma I. Wagner, Executrix of the Estate of Robert G. Wagner, Deceased, as principal, and the United States Fidelity & Guaranty Company, as surety, made and executed their certain writing obligatory, otherwise called bond, now the Court shown, duly executed by them on that date with the name of Alma I. Wagner, Executrix of the Estate of Robert G. Wagner, Deceased, thereto signed and the name of the United

States Fidelity & Guaranty Company thereto signed by H. V. D. Johns, Attorney in fact, and its corporate seal thereto affixed, whereby they acknowledged themselves to be held and firmly bound to the United States of America in the sum of \$26,760.88 for the payment whereof they firmly bound themselves, and each of them, their successors and assigns, jointly and severally; that on, to-wit, December 15, 1931, the said bond was approved by Stephen J. McMahan, member of the United States Board of Tax Appeals, whose signature appears thereon; that said bond so made, executed and approved was duly delivered to the plaintiff, the United States of America; that copy of said bond is hereto attached and made a part hereof, the same as if fully written herein, and marked "Exhibit A" for convenience of reference and identification.

XII.

Said bond had, and has, a condition therein written in words and symbols as follows:

NOW, THEREFORE, the condition of this obligation is such, that if the above named ALMA I. WAGNER, EXECUTRIX OF THE ESTATE OF ROBERT G. WAGNER, DECEASED, shall file her petition for review and shall prosecute said petition for review to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

XIII.

That induced by said bond and in reliance thereon, plaintiff refrained from collection of said income tax and interest thereon, pending the decision of the United States Circuit Court of Appeals for the Ninth Circuit with reference to the petition for review.

XIV.

That the said Alma I. Wagner, duly filed a petition for review of the decision of the United States Board of Tax Appeals by the United States Circuit Court of Appeals for the Ninth Circuit, which said Court, on, to-wit, March 13, 1933, by its judgment affirmed the decision of the United States Board of Tax Appeals.

XV.

That on, to-wit, June 15, 1933, the time in which the said Alma I. Wagner, Executrix of the Estate of Robert G. Wagner, Deceased, might file a petition for writ of certiorari from the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, expired and no petition for a writ of certiorari was or has been filed.

XVI.

That the deficiency of tax for 1920 in the amount of \$13,380.44 together with interest thereon to August 26, 1933, in the sum of \$6,021.20, was duly assessed by the Commissioner of Internal Revenue on the August 1933 List for the Sixth District of California.

XVII.

That on, to-wit, September 1, 1933, plaintiff, through its Collector of Internal Revenue, made demand for pay-

ment of \$19,401.64, tax and interest, on the defendant, the said Alma I. Wagner, Executrix of the Estate of Robert G. Wagner, Deceased; that on, to-wit, February 28, 1934, the plaintiff, through its Collector of Internal Revenue, made demand for payment of the said tax together with interest thereon, upon defendant, the said United States Fidelity & Guaranty Company, but notwithstanding such demands, the payment of said tax and/or interest thereon has not been made, nor any part thereof; the said defendants herein having wholly neglected, failed and refused to pay the same or any part thereof; and still so neglect and refuse to pay.

XVIII.

By reason of the premises, plaintiff avers that it has done and performed all the matters and things by it to be done and performed in accordance with the terms and stipulations of the bond; that the defendants, Alma I. Wagner, Executrix of the Estate of Robert G. Wagner, Deceased, and the United States Fidelity & Guaranty Company, have failed, neglected, and refused to do and perform the things therein required of them to be done and performed, and have breached the said bond, whereby the promise thereof has become and now is absolute, and there has accrued to plaintiff the right to demand and have of them on account thereof, Nineteen thousand, four hundred and one and 64/100ths (\$19,401.64) Dollars with interest on Thirteen thousand three hundred and eighty and 44/100ths (\$13,380.44) Dollars from August 26, 1933 to September 1, 1933 at the rate of six per cent per annum, and from September 1, 1933 at the

rate of one per cent per month, which they promised to pay but which they have already failed and neglected and refused to pay although such payment has been demanded of them by plaintiff.

XIX.

WHEREFORE, plaintiff prays that it may have judgment jointly and severally against the defendants for Nineteen thousand four hundred and one and 64/100ths (\$19,401.64) Dollars, with interest on Thirteen thousand Three Hundred and Eighty and 44/100ths (\$13,380.44) Dollars, from August 26, 1933 to September 1, 1933 at six per cent and from September 1, 1933 at one per cent per month, and the plaintiff's costs herein expended.

PEIRSON M. HALL,
United States Attorney.

ROBERT WINFIELD DANIELS,
Asst. United States Attorney,
Attorneys for Plaintiff.

EXHIBIT "A"

UNITED STATES

FIDELITY and GUARANTY COMPANY

No..... BALTIMORE, MARYLAND. \$26,760.88

UNITED STATES BOARD OF TAX APPEALS

WASHINGTON, D.C.

ALMA I. WAGNER, EXECUTRIX OF THE ESTATE
OF ROBERT G. WAGNER, DECEASED,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

Docket No. 32981

BOND

KNOW ALL MEN BY THESE PRESENTS, that we, ALMA I. WAGNER, EXECUTRIX OF THE ESTATE OF ROBERT G. WAGNER, DECEASED, as Principal and the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Maryland, as Surety, are held and firmly bound unto the above named COMMISSIONER OF INTERNAL REVENUE and/or the UNITED STATES OF AMERICA, in the sum of Twenty-six Thousand Seven Hundred Sixty and 88/100 Dollars (\$26,760.88) (double the deficiency), to be paid to the said COMMISSIONER OF INTERNAL REVENUE and/or the UNITED STATES OF AMERICA; for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns, jointly and severally, firmly by these pres-

ents. Sealed with our seals and dated the 24th day of October, in the year of our Lord One Thousand Nine Hundred and Thirty-One.

WHEREAS, the above named ALMA I. WAGNER, EXECUTRIX OF THE ESTATE OF ROBERT G. WAGNER, DECEASED, is filing or is about to file with the U. S. Board of Tax Appeals, a petition for review of the Board Decision by the Circuit Court of Appeals of the United States for the Ninth Circuit to reverse the final order of redetermination rendered in the above entitled cause.

NOW, THEREFORE, the condition of this obligation is such, that if the above named ALMA I. WAGNER, EXECUTRIX OF THE ESTATE OF ROBERT G. WAGNER, DECEASED, shall file her petition for review and shall prosecute said petition for review to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ALMA I. WAGNER

Executrix of the Estate of
Robert G. Wagner, Deceased.

UNITED STATES FIDELITY AND
GUARANTY COMPANY.

By H. V. D. JOHNS
Attorney-in-Fact.

APPROVED BY Stephen J. McMahan
Member United States Board of
Tax Appeals.

SEAL

Date Dec. 15th, 1931.

T202755

Los Angeles 45 G-26-31 5M

STATE OF CALIFORNIA,
County of Los Angeles—ss.

On this 24th day of October in the year one thousand nine hundred and Thirty-One, before me, Agnes L. Whyte, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared H. V. D. Johns, known to me to be the duly authorized Attorney-in-fact of the UNITED STATES FIDELITY AND GUARANTY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company, and the said H. V. D. Johns duly acknowledged to me that he subscribed the name of the UNITED STATES FIDELITY AND GUARANTY COMPANY thereto as Surety and his own name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

AGNES L. WHYTE

Notary Public in and for Los Angeles
County, State of California

My Commission Expires February 26, 1933

TREASURY DEPARTMENT
Office of The Secretary

COMMISSIONER OF ACCOUNTS AND DEPOSITS

Section of Surety Bonds

Examined and approved as to
the within corporate surety.

D. W. BELL DEC 15 1931

Commissioner of Accounts and Deposits

(Endorsed): Alma I. Wagner, Executrix of the Estate of Robert G. Wagner, Deceased, Appellant, vs. Commissioner of Internal Revenue, Appellee. United States Fidelity and Guaranty Company, Baltimore Maryland. Filed Mar. 25, 1935. R. S. Zimmerman, Clerk. By L. Wayne Thomas, Deputy.

[TITLE OF COURT AND CAUSE]

At Law No. 7125-M

ANSWER

Comes now the defendant ALMA I. WAGNER, and answers the complaint herein as follows:

I.

Admits the allegations contained in Paragraph I of said complaint.

II.

Admits the allegations contained in Paragraph II of said complaint.

III.

Admits the allegations contained in Paragraph III of said complaint.

IV.

Defendant alleges that she has no information or belief upon the matters alleged in Paragraph IV of the complaint sufficient to enable her to answer the same, and basing her denial on that ground she denies that this suit is authorized and sanctioned by the Attorney General of the United States at the request of the United States Commissioner of Internal Revenue.

V.

Admits the allegations contained in Paragraph V of said complaint.

VI.

Admits the allegations contained in Paragraph VI of said complaint.

VII.

Admits the allegations contained in Paragraph VII of said complaint.

VIII.

Admits the allegations contained in Paragraph VIII of said complaint.

IX.

Admits the allegations contained in Paragraph IX of said complaint.

X.

Admits the allegations contained in Paragraph X of said complaint.

XI.

Answering Paragraph XI of said complaint, defendant admits that on December 15, 1931 she executed as principal, and the defendant United States Fidelity and Guaranty Company executed as surety, a certain written instrument purporting to be a bond and that Exhibit A of plaintiff's complaint is a copy of said written instrument. Defendant admits that said purported bond was approved by Stephen J. McMahon, member of the United States Board of Tax Appeals, and was delivered to plaintiff. Defendant denies all the allegations of said paragraph not herein expressly admitted. Defendant denies that said purported bond was duly executed and denies

that said bond was executed in accordance with the provisions of Section 1001 of the Revenue Act of 1926 as amended by Section 603 of the Revenue Act of 1928 or in accordance with the provisions of any other statute of the United States relating to the filing of petitions for the review of decisions of the United States Board of Tax Appeals by the United States Circuit Court. Defendant further alleges that on April 7, 1931, she was discharged as Executrix of the Estate of Robert G. Wagner, deceased, and that on December 15, 1931 she had no authority whatever to act for or on behalf of or to represent in any manner the Estate of Robert G. Wagner, deceased.

XII.

Admits the allegations contained in Paragraph XII of said complaint.

XIII.

The defendant alleges that she has no information or belief upon the matters alleged in Paragraph XIII of the complaint herein sufficient to enable her to answer the same, and basing her denial on that ground she denies that, induced by said bond and in reliance thereon, plaintiff refrained from collection of said income tax and interest thereon pending the decision of the United States Circuit Court of Appeals for the Ninth Circuit with reference to the petition for review.

XIV.

Defendant admits that she filed a petition for review of the decision of the United States Board of Tax Appeals by the United States Circuit Court of Appeals for the Ninth Circuit and that on March 13, 1933 the Cir-

cuit Court of Appeals for the Ninth Circuit, by its judgment, affirmed the decision of the United States Board of Tax Appeals. Defendant denies that said petition for review was duly filed and alleges that at the time said petition was filed, defendant was not executrix of the estate of Robert G. Wagner, deceased, and had no authority to represent said estate or to prosecute any actions or appeals for or on behalf of said estate.

XV.

Defendant denies generally and specifically each and every allegation contained in Paragraph XV of said complaint and alleges that the time for filing a petition for a writ of certiorari from the judgment of the United States Circuit Court of Appeals for the Ninth Circuit expired on June 12, 1933.

XVI.

Defendant denies generally and specifically each and every allegation contained in Paragraph XVI of said complaint and alleges that the deficiency of tax for 1920 in the amount of \$13,384.44, together with interest thereon to August 26, 1933 in the sum of \$6,021.20, was assessed by the Commissioner of Internal Revenue on August 26, 1933. Defendant denies that said assessment was duly made and alleges that under Sections 277 and 278 of the Revenue Act of 1926 the time for assessment of said deficiency expired on August 11, 1933 and alleges that at the time the assessment of said deficiency was made, to-wit, on the 26th day of August, 1933, that said assessment was barred by the Statute of Limitations, as provided in Sections 277 and 278 of the Revenue Act of 1926.

XVII.

Defendant admits the allegations contained in Paragraph XVII of the said complaint.

XVIII.

Defendant denies generally and specifically each and every allegation contained in Paragraph XVIII of the said complaint, save and except defendant admits that demand for payment has been made by plaintiff, and that defendants, and each of them, have failed, refused and neglected to make payment.

WHEREFORE, defendant prays for judgment in her favor, for costs and for such other relief as may be just and proper in the premises.

CLAUDE I. PARKER

JOHN B. MILLIKEN

GEORGE H. KOSTER

Attorneys for Defendant

Alma I. Wagner.

STATE OF CALIFORNIA,

County of Los Angeles—ss.

ALMA I. WAGNER, being first duly sworn, deposes and says:

That she is one of the defendants in the above entitled action; that she has read the foregoing answer and knows the contents thereof and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

ALMA I. WAGNER.

Subscribed and sworn to before me this 27th day of August, 1935.

(SEAL)

MARGUERITE LESAGE

Notary Public in and for the County of
Los Angeles, State of California.

(Endorsed): Filed Aug. 29, 1935. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy.

[TITLE OF COURT AND CAUSE]

At Law No. 7125-M

ANSWER OF UNITED STATES FIDELITY &
GUARANTY COMPANY

Comes now the defendant, United States Fidelity & Guaranty Company, a corporation, for itself alone and not otherwise, and answering the complaint of plaintiff herein, admits, denies and alleges:

I.

Admits the allegations contained in Paragraph I of said complaint.

II.

Admits the allegations contained in Paragraph II of said complaint.

III.

Admits the allegations contained in Paragraph III of said complaint.

IV.

Defendant alleges that it has no information or belief upon the matters alleged in Paragraph IV of the com-

plaint sufficient to enable it to answer the same and basing its denial on that ground denies that this suit is authorized or sanctioned by the Attorney General of the United States at the request of the United States Commissioner of Internal Revenue.

V.

Admits the allegations contained in Paragraph V of said complaint.

VI.

Admits the allegations contained in Paragraph VI of said complaint.

VII.

Admits the allegations contained in Paragraph VII of said complaint.

VIII.

Admits the allegations contained in Paragraph VIII of said complaint.

IX.

Admits the allegations contained in Paragraph IX of said complaint.

X.

Admits the allegations contained in Paragraph X of said complaint.

XI.

Answering Paragraph XI of said complaint, defendant admits that on December 15, 1931, defendant Alma I. Wagner executed, as principal, and the defendant, United States Fidelity & Guaranty Company, executed as surety, a certain written instrument purporting to be a bond and that Exhibit A of plaintiff's complaint is a copy of said written instrument. Defendant admits that said pur-

ported bond was approved by Stephen J. McMahn, member of the United States Board of Tax Appeals, and was delivered to plaintiff. Defendant denies all the allegations of said paragraph not herein expressly admitted. Defendant denies that said purported bond was duly executed and denies that said bond was executed in accordance with the provisions of Section 1001 of the Revenue Act of 1926 as amended by Section 603 of the Revenue Act of 1928 or in accordance with the provisions of any other statute of the United States relating to the filing of petitions for the review of decisions of the United States Board of Tax Appeals by the United States Circuit Court of Appeals. Defendant further alleges that on April 7, 1931, defendant Alma I. Wagner, was duly discharged as the executrix of the estate of Robert G. Wagner, deceased, and that on December 15, 1931, she had no authority whatever to act for or on behalf of or to represent in any manner the estate of Robert G. Wagner, deceased.

XII.

Admits the allegations contained in Paragraph XII of said complaint.

XIII.

The defendant alleges that it has no information or belief upon the matters alleged in Paragraph XIII of the complaint herein sufficient to enable it to answer the same and basing its denial upon that ground denies that induced by said bond or in reliance thereon, plaintiff refrained from collection of said income tax and interest thereon pending the decision of the United States Cir-

cuit Court of Appeals for the Ninth Circuit with reference to the petition for review.

XIV.

Answering Paragraph XIV of the complaint, defendant admits that defendant, Alma I. Wagner, filed a petition for review of the decision of the United States Board of Tax Appeals by the United States Circuit Court of Appeals for the Ninth Circuit and that on March 13, 1933, the Circuit Court of Appeals for the Ninth Circuit, by its judgment, affirmed the decision of the United States Board of Tax Appeals. Defendant denies that said petition for review was duly filed and alleges that at the time said petition was filed, defendant, Alma I. Wagner, was not executrix of the estate of Robert G. Wagner, deceased, and had no authority to represent said estate or to prosecute any actions or appeals for or on behalf of said estate.

XV.

Defendant denies generally and specifically each and every allegation contained in Paragraph XV of said complaint and alleges that the time for filing a petition for a writ of certiorari from the judgment of the United States Circuit Court of Appeals for the Ninth Circuit expired on June 12, 1933.

XVI.

Defendant denies generally and specifically each and every allegation contained in Paragraph XVI of said complaint and alleges that the deficiency of tax for 1920 in the amount of \$13,384.44, together with interest thereon to August 26, 1933, in the sum of \$6,021.20, was

assessed by the Commissioner of Internal Revenue on August 26, 1933, and not heretofore. Defendant denies that said assessment was duly made and alleges that under Sections 277 and 278 of the Revenue Act of 1926 the time for assessment of said deficiency expired on August 11, 1933, and alleges that at the time the assessment of said deficiency was made, to-wit, on the 26th day of August, 1933, that said assessment was barred by the statute of limitations, as provided in Sections 277 and 278 of the Revenue Act of 1926.

XVII.

Defendant admits the allegations contained in Paragraph XVII of the said complaint.

XVIII.

Defendant denies generally and specifically each and every allegation contained in Paragraph XVIII of the said complaint, save and except defendant admits that demand for payment has been made by plaintiff, and that defendants, and each of them, have failed, refused and neglected to make payment.

WHEREFORE, defendant prays for judgment in its favor, for costs, and for such other relief as may be just and proper in the premises.

MILLS, HUNTER & DUNN

By EDWARD C. MILLS

Attorneys for defendant, United States Fidelity & Guaranty Company, a corporation.

STATE OF CALIFORNIA

County of Los Angeles—ss.

J. T. Quail being by me first duly sworn, deposes and says: that he is the Superintendent of Claims for United States Fidelity & Guaranty Company, one of the defendants in the within action; that this verification is made by the affiant for the reason that said company is a corporation; that none of the officers are within the County of Los Angeles, and that affiant is an employee of said Corporation who has investigated and has knowledge of the facts alleged in the answer in the above entitled action; that he has heard read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

J. T. QUAIL.

Subscribed and Sworn to before me this 20th day of Aug., 1935.

(SEAL)

Alice Jean Brookmeyer
Notary Public in and for the County of
Los Angeles.

(Endorsed): Filed Aug. 29, 1935. R. S. Zimmerman,
Clerk. By L. Wayne Thomas, Deputy Clerk.

At a stated term, to wit: The September Term, A.D. 1936, of the District Court of the United States of America, within and for the Central Division of the

Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday, the 25th day of September, in the year of our Lord one thousand nine hundred and thirty-six.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

United States of America, Plaintiff,

vs.

Alma I. Wagner, Executrix of the Estate of
of Robert G. Wagner, deceased, and United
States Fidelity & Guaranty Co., a Corp.,
Defendant.

No. 7125-M

Law

This cause coming before the court for trial; Alva C. Baird, Assistant U. S. Attorney, appearing for the government; and J. Everett Blum, Esq., appearing as counsel for defendant Alma I. Wagner, etc.; Attorney Mills appearing as counsel for U. S. Fidelity & Guarantee Co.; A. Wahlberg being present as official court reporter;

At 10:02 o'clock a.m. counsel answer ready, and it is ordered to proceed;

J. E. Blum, Esq., confesses judgment against defendant Alma I. Wagner, etc.;

Attorney Mills joins in the confession of judgment;

It is ordered that cross-complaint of U. S. Fidelity & Guaranty Corp. against Alma I. Wagner may be filed;

J. E. Blum, Esq., confesses judgment on said cross-complaint, and it is stipulated between the defendants

that \$500.00 be allowed to the U. S. Fidelity & Guaranty Corp. as attorney's fee;

Alva C. Baird, Esq., moves for allowance of interest as prayed, with a certain modification;

J. E. Blum, Esq., makes reply thereto;

It is ordered said motion be denied; exception noted favor of the government;

It is ordered that interest of 6% from August 26, 1933 to September 1, 1933 and 7% from September 1, 1933 to August 30, 1935 and 6% from August 30, 1935 until paid, be allowed.

It is stipulated and ordered that defendant Alma I. Wagner may have fifteen days stay of execution on judgments. Counsel to prepare judgment herein.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALMA I. WAGNER, EXECUTRIX OF THE ESTATE
OF ROBERT G. WAGNER, DECEASED, AND
UNITED STATES FIDELITY AND GUARANTY
COMPANY, A CORPORATION,

Defendants.

UNITED STATES FIDELITY AND GUARANTY COM-
PANY, A CORPORATION,

Defendant and Cross-Complainant,

v.

ALMA I. WAGNER,

Defendant and Cross-Defendant.

At Law No. 7125-M

JUDGMENT

The above-entitled cause came on regularly for trial on the 25th day of September, 1936, before the Court sitting without a jury, a jury having been expressly waived in writing, the plaintiff appearing by its attorneys, Peirson M. Hall, United States Attorney for the Southern District of California, E. H. Mitchell, Special Assistant United States Attorney, and Alva C. Baird, Assistant United States Attorney; the defendant and cross-defendant Alma I. Wagner, Executrix of the Estate of Robert C. Wagner, deceased, appearing by Claude I. Parker and

J. Everett Blun, her attorneys, and the defendant and cross-complainant United States Fidelity and Guaranty Company, a corporation, appearing by its attorneys, Mills, Hunter & Dunn, by Edward C. Mills, and attorneys for both defendants having in open Court confessed judgment in the principal amount sued for, and having submitted for decision the question of the proper rate of interest to be computed thereon, and the Court having been fully advised in the premises, finds generally, both upon the facts and the law, in favor of the plaintiff and against the defendants, and in favor of cross-complainant and against cross-defendant.

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be entered against the defendants jointly and severally in favor of the plaintiff United States of America in the sum of \$19,401.64, together with interest on \$13,380.44 thereof as follows:

From August 26, 1933 to September 1, 1933, at 6%	\$ 13.38
From September 1, 1933, to August 30, 1935, at 7%	1,873.20
From August 30, 1935 to October 1, 1936, at 6%	869.70
Principal, \$19,401.64; Interest \$2,756.28; total judgment, \$22,157.92.	

IT IS FURTHER ORDERED that the plaintiff recover from said defendants its costs herein expended. Costs taxed at \$20.28.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that cross-complainant United States Fidelity and Guaranty

Company, a corporation, do have and recover of and from cross-defendant Alma I. Wagner the sum of \$22,-157.92 together with the costs of said cross-complainant herein incurred and the additional sum of \$500.00 as attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Judgment herein in favor of cross-complainant and against cross-defendant shall be without prejudice to the rights of cross-complainant and cross-defendant under any contract or agreement existing between them in connection with the deposit or pledge with or holding by said cross-complainant, United States Fidelity and Guaranty Company, a corporation, of any property as collateral security to the obligation of said cross-defendant, Alma I. Wagner, to said United States Fidelity and Guaranty Company, a corporation, by reason of the execution of the bond herein sued upon and the right of said cross-complainant, United States Fidelity and Guaranty Company, a corporation, to have execution herein and its rights under such collateral agreements shall be cumulative and without prejudice. one to the other.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any sum paid by said cross-defendant, Alma I. Wagner, to plaintiff, United States of America, on account of its Judgment herein against defendants or paid by said United States Fidelity and Guaranty Company, a corporation, on account of said Judgment out of the proceeds of collateral held by it, shall to the extent of such payments be credited upon and in satisfaction pro tanto of the Judgment herein rendered in favor of said cross-complainant, United States Fidelity and Guaranty Com-

pany, a corporation, and against said Alma I. Wagner, cross-defendant herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that execution on the Judgment in favor of the United States of America and in favor of cross-complainant, United States Fidelity and Guaranty Company, a corporation, be stayed for the period of fifteen (15) days from the date of entry hereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attorneys' fees herein adjudged to be paid by cross-defendant to cross-complainant are in full for all services of attorneys heretofore rendered or hereafter to be rendered, except such services as may be rendered in connection with any appeal taken from this Judgment.

DATED: This 1st day of October, 1936.

PAUL J. McCORMICK

United States District Judge.

Approved as to form
as provided by Rule 44:

CLAUDE I. PARKER

J. EVERETT BLUM

Attorneys for defendant and cross-defendant, Alma I. Wagner.

MILLS, HUNTER & DUNN

by EDWARD C. MILLS

Attorneys for defendant and cross-complainant, United States Fidelity and Guaranty Company, a corporation.

PEIRSON M. HALL—by ALVA C. BAIRD
Attorneys for plaintiff, United States
of America.

Judgment entered and recorded Oct. 1-1936. R. S. Zimmerman, Clerk. By B. B. Hansen, Deputy Clerk.

(Written in pen and ink in margin): Filed 1/5/37 Satis. of Judg. in amt \$22,212.43 as to deflt. Wagner. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy.

(Endorsed): Filed Oct. 1-1936. R. S. Zimmerman, Clerk. By B. B. Hansen, Deputy Clerk. Judgment entered & recorded Oct. 1, 1936. R. S. Zimmerman, Clerk. By B. B. Hansen, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALMA I. WAGNER, Executrix of the Estate
of ROBERT G. WAGNER, deceased, and
UNITED STATES FIDELITY AND GUARANTY
COMPANY, a Corporation,

Defendants.

No. 7125-M

PETITION FOR APPEAL FROM JUDGMENT
ENTERED OCTOBER 1, 1936.

TO THE ABOVE-ENTITLED COURT AND TO HONORABLE
PAUL J. McCORMICK, Judge thereof:

Your Petitioner, the Plaintiff in the above-entitled case,
feeling aggrieved by the judgment as entered herein in

favor of said plaintiff on October 1, 1936, prays that this appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rule of such Court in such cases made and provided, and in connection with this Petition Petitioner hereby presents Assignment of Errors dated December 28, 1936.

PEIRSON M. HALL,

Peirson M. Hall,

United States Attorney.

E. H. MITCHELL,

E. H. Mitchell,

Asst. U. S. Attorney.

ALVA C. BAIRD,

Alva C. Baird,

Asst. U. S. Attorney.

(Endorsed): Filed Dec. 30, 1936. R. S. Zimmerman,
Clerk. By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

No. 7125-M

ASSIGNMENT OF ERRORS

The Plaintiff makes and files the following Assignment of Errors upon which it will rely in the prosecution of the appeal from the judgment of this Court on the first day of October, 1936:

I.

The Court erred in fixing the amount of the judgment against the defendants and in favor of the Plaintiff in a sum which included interest on the amount of \$13,380.44 at the rate of 7% per annum from September 1, 1933 to August 30, 1935, and not at the rate of 12% per annum for said period of time as provided by Section 274 (k) of the Revenue Act of 1926.

II.

The Court erred in failing to render judgment against the defendants and in favor of the Plaintiff for an amount sufficient to include interest on the sum of \$13,380.44 at the statutory rate of 12% per annum from September 1, 1933 to August 30, 1935.

Dated December 28, 1936.

PEIRSON M. HALL,
Peirson M. Hall,
United States Attorney.

E. H. MITCHELL,
E. H. Mitchell,
Special Assistant U. S. Attorney.

ALVA C. BAIRD,
Alva C. Baird,
Assistant United States Attorney.

(Endorsed): Filed Dec. 30, 1936. R. S. Zimmerman,
Clerk. By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALMA I. WAGNER, Executrix of the Estate
of ROBERT G. WAGNER, deceased, and
UNITED STATES FIDELITY AND GUARANTY
COMPANY, a Corporation,

Defendants.

No. 7125-M

ORDER ALLOWING APPEAL

The Plaintiff herein, United States of America, having filed its petition for appeal from the judgment entered herein, together with its assignment of errors herein,

IT IS HEREBY ORDERED that the appeal prayed for in said petition of Plaintiff in the above-entitled cause is allowed.

Dated: December 30th, 1936.

PAUL J. McCORMICK

Paul J. McCormick

(Endorsed): Filed Dec. 30, 1936. R. S. Zimmerman,
Clerk. By L. B. Figg, Deputy Clerk.

[TITLE OF COURT AND CAUSE]

No. 7125-M

PRAECIPE

To: R. S. Zimmerman, Clerk of the United States District Court, Southern District of California:

YOU ARE HEREBY REQUESTED to make a Transcript of Record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an Appeal allowed in the above-entitled cause, and to include in said Transcript of Record, the following papers:

1. Citation on Appeal.
2. Complaint.
3. Answer.
4. ~~Stipulation Waiving Jury.~~
5. Minute Order of September 25, 1936.
6. Judgment.
7. Petition for Appeal.
8. Assignment of Errors.
9. Order Allowing Appeal.
10. Clerk's Certificate and this Praecipe.

Dated February 17, 1937.

PEIRSON M. HALL,
Peirson M. Hall,
United States Attorney.

E. H. MITCHELL,
E. H. Mitchell,
Special Assistant U. S. Attorney.

ALVA C. BAIRD,
Alva C. Baird,
Assistant United States Attorney.

(Endorsed): Filed Feb. 18, 1937. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

CLERK'S CERTIFICATE

I, R. S. ZIMMERMAN, Clerk of the United States District Court, for the Southern District of California, do hereby certify the foregoing Transcript containing 35 pages numbered from 1 to 35, inclusive, to be the Transcript of Record on Appeal in the within entitled action, as printed by the Appellant and presented to me for comparison and certification, and that the same has been compared and corrected by me, and contains full, true and correct copies of original documents in said action, as follows:

Citation,
 Complaint,
 Answer,
 Minute Order of September 25, 1936,
 Judgment,
 Petition for Appeal,
 Assignment of Errors,
 Order Allowing Appeal, and
 Praeceptum.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States, in and for the Southern District of California, this day of February, in the year of our Lord One Thousand Nine Hundred Thirty-seven, and of our Independence the One Hundred and Sixty-first.

(SEAL)

R. S. ZIMMERMAN, Clerk,

By.....

Deputy Clerk.